

the east side of Gay street, from the south side of Pratt street into the basin, a distance of about eight hundred and sixteen feet; with an east extension, at right angles from its south end, of about eighty-six feet. It appears, and is admitted, that the tide-water of the basin originally flowed a considerable distance above the present termination of Gay street; that the patent for the tract called Cole's Harbor, included the lands, on which this part of the city was laid out, only to the line of the tide-water as it originally flowed, and no further; that no patent had ever been issued for any part of the land which was originally covered by the tide-water of the basin; that the whole of the strip of land in question, at one time, formed a part of the bed of this navigable basin; that John Smith, who was the owner of a lot on Gay street extending to the tide, applied to the port wardens of Baltimore for permission to extend his wharf into the basin, together with ten or fifteen feet of Gay street; that, on the 26th of September, 1786, permission was granted to extend his wharf, as prayed, until it intersected a line drawn east from a point eighty feet south of the south side of Conway street, and parallel thereto, together with eleven feet of Gay street continued along the front of said wharf; but instead of taking only eleven feet, the wharf was carried out, as it now is, to about twenty-nine feet on Gay street; that this strip of land had been altogether made and raised upon the bed of the basin by John Smith and others, who completed it about the year 1796; and it was not, in any sense, an alluvion, or attached as such to any other fast land; that, upon ground made near and fronting the whole of this strip of land, warehouses had been built; and that John Smith, and those who claimed under him, for some years, charged and received wharfage; but in the year 1803, the city began to collect wharfage, and continued their collections until about the year 1828.

\* These claimants found their prayer for patents upon the facts, that the State had never, at any time, either by a **455** grant from the land office, or, in any other legal manner, parted with its right of soil, in the land in question to any one; and that it is such a piece of grantable land for which they now may; or any one else might have obtained a patent, according to the rules of the land office, upon payment of the composition money.

On the other hand the caveators contend, that no patents can be allowed to issue; because the strip of land in question was a public wharf on which they, during many years, had charged and collected wharfage; and the right of soil in all such wharves had been virtually vested in them by the Act which gives them the right to charge and collect wharfage; 1827, ch. 162; since to give all the uses of land is, in effect, to give the land itself. And also because, even supposing no right had been vested in them by that Act of Assembly; yet it was sufficient to prevent the issuing of a